



The Guide to Monetisation - Second Edition

**Closing the intangible valuation gap in
M&A deal pricing**

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The second edition of the IAM *Guide to Monetisation* provides global coverage and a nuanced exploration of valuing and monetising patents, trademarks, copyright and trade secrets, to answer the big questions of where to find untapped intangible assets, how to put a price on them and why they could be the engine to an entirely new revenue stream for businesses.

Generated: December 19, 2025

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Closing the intangible valuation gap in M&A deal pricing

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INTRODUCTION

The *Google/Motorola Mobility* (MMI) acquisition (2011)^[2] represents one of the largest and better-known intellectual property (IP)-driven acquisitions. The consensus around this US\$12.5 billion deal at the time of the acquisition was that the deal had primarily been driven by MMI's extensive IP portfolio, including about 17,000 issued patents and another 7,000 patent applications covering seminal mobile technologies. Many acquisitions are driven by IP in high-tech and heavy research and development (R&D) industries (assets such as patents and developed technology) as well as in consumer goods and entertainment (assets such as brands and copyrights). While there is no dispute about the importance of IP in acquisitions, when it comes to valuation and pricing of the deal, it is not always easy or even possible to pinpoint exactly how intangible assets impact merger and acquisition (M&A) deal pricing. MMI was acquired at a significant premium to its trading price at the time, but was this premium all attributed to its patents? Around the time of the acquisition, many market experts were trying to guess what the IP portfolio's share of the acquisition price was. Some went as far as attributing the entire US\$12.5 billion acquisition price to the patent portfolio, disregarding all other assets owned by MMI. The main reason for the confusion is that the MMI balance sheet pre-M&A had no patents reported on it – a practice that is consistent with the accounting treatment of internally generated intangible assets, which does not require that these assets be reported on the balance sheet. As a result, when valuing a target company in an M&A deal, its intangible assets are not easily identifiable; as a result, they are not easily measurable. This problem is further exacerbated by the fact that M&A deal pricing is not done on an asset-by-asset basis but rather at the stock price level, resulting in many sellers who feel that intangible assets are ignored and are not reflected at their fair value in deal pricing. This 'intangible valuation gap' is discussed in detail in this article. We explore the types of M&A deals, how M&A deals are priced, how accounting rules and M&A pricing conventions result in intangible assets being ignored or undervalued in M&A deal pricing, and how addressing this gap can help close the valuation gap between buyers and sellers to get more deals done.

M&A DEAL TYPES AND MARKET TRENDS

M&A deals represent two common forms of business combinations that are prevalent across many different industries and regions. While they usually go hand in hand with the acronym 'M&A', mergers and acquisitions are two separate transactions: mergers represent the coming together of two companies, usually of equal size, to create a new entity, while acquisitions involve a buyer acquiring a seller (also referred to as a target) that gets absorbed by the buyer's corporate entity.

Several types of M&A deals in global markets today differ by focus and scope (we use the word 'mergers' as this is a term of art, but these types of deals cover both mergers and acquisitions):

- Horizontal mergers occur when two companies operating in the same industry combine operations. This type of merger is primarily driven by the desire to consolidate market share, streamline operations and achieve economies of scale. A well-known example in the social media industry is the acquisition of Instagram by Facebook (2011). While horizontal deals can lead to synergies, they are subject to regulatory antitrust scrutiny due to concerns about reduced competition and potential monopolistic behaviour. A recent example of a deal disqualified for antitrust

considerations is NVIDIA's proposed acquisition of Arm Limited (2022), which was abandoned after scrutiny from regulators in multiple countries.

- Vertical mergers involve companies that operate at different tiers along the supply chain of the same industry, for example the eBay acquisition of PayPal (2002), which integrated secure payment services with an e-commerce platform. Another example from a different industry is the Amazon acquisition of Whole Foods (2017), which combined an online retailer with a brick-and-mortar grocery chain. Vertical deals are driven by the need to gain better control over the supply chain, and while they can be beneficial in improving efficiency, they may also lead to concerns about anticompetitive practices if the merged entity restricts supply to its competitors.
- Conglomerate mergers occur between companies that operate in different industries. Unlike horizontal or vertical mergers, the primary goal of conglomerate mergers is product diversification. By merging with a company in an unrelated industry, the acquiring company can reduce its overall business risk and gain entry into new markets. One notable example is Walt Disney Company's acquisition of ABC (1996), where a leading entertainment content creator acquired a major television network. Another recent example is Google's acquisition of Nest Labs (2014), marking an expansion of its core search engine and advertising business into the smart home market. While conglomerate mergers can provide stability and growth opportunities, they may also present challenges relating to managing diverse business operations and maintaining focus across different industries.

The global M&A market has seen a decline in deal activity in the past couple of years. In its 2024 M&A report, Bain & Company observed a 15 per cent decline in M&A activity in 2023.^[3] From peak activity of US\$6 trillion in global M&A deals in 2021, deal volume dropped to US\$3.7 trillion in 2022 and further continued to drop to US\$3.2 trillion in 2023. About US\$2.4 trillion (about 75 per cent) of 2023 deals were strategic deals involving corporate buyers (the rest were financial investors and special purpose deals). Bain & Company pointed to the inability to bridge the valuation gap between sellers and buyers as the main cause for deal stagnation in 2023, leading to the lowest year for strategic M&A deal volume in a decade. Other contributing factors included microeconomic conditions (high interest rates or uncertainty) and regulatory and political factors.

The focus on the valuation gap as an obstacle to getting M&A deals done is the perfect segue into the unique role of IP in bridging the gap in deal pricing. We turn next to discuss the impact of intangible assets on M&A deal pricing on both the buyer side and the seller side and how these assets can be leveraged to close the gap successfully.

M&A DEAL PRICING AND THE INTANGIBLE VALUATION GAP

IP assets (also referred to as 'intangible assets', a term common in financial reporting used interchangeably throughout this article) play a critical role in M&A deals, primarily in high-tech industries where intangible assets account for a large portion of corporate value. From an IP perspective, M&A deals are common vehicles for incorporating new technologies either horizontally or vertically within an industry. M&A deals also represent the most common form of start-up exits (as opposed to an initial public offering), and these exits are almost exclusively driven by IP and technology.

To understand how IP can help close the M&A valuation gap between buyer and seller, we need to first understand how companies are valued in an M&A deal and how intangible

assets impact that valuation. In M&A situations, the acquired companies are usually valued at the stock (equity) level by assigning a per-share price to the shares of the target company. Whether the company is publicly traded (i.e., has a market price that is determined through trading in the stock market) or privately held (i.e., it has no published stock price), the buyer and seller both go through their own valuation analysis of the seller's stock price. It should be noted that M&A deals may be structured as an asset sale or a stock sale for tax purposes, which is outside the scope of this article. Our focus is on valuation issues concerning corporate and IP value, which do not depend on the tax structure of the deal.

To get to the stock price of the target company, a business valuation is done in several steps (this is a rough sketch of the process, not considering many of the nuances incorporated in each step):

- Selecting one or more business valuation approaches (i.e., market, income and asset approaches):
 - the market approach: based on valuation multiples derived from deals in the market involving comparable businesses. The two most common sources of market comparisons are public companies and precedent transactions;
 - the income approach: the net present value of projected future free cash flows to be generated by the target, based on a discounted cash flow (DCF) analysis while applying an appropriate discount rate, usually the weighted average cost of capital of the target; and
 - the asset approach: this approach is more appropriate for companies where tangible assets comprise the majority of the value, and is not very applicable for pricing target companies in IP-driven acquisitions (where intangible assets drive the value).
- Selecting the appropriate methodologies within each selected valuation approach.
- Applying the selected valuation approaches and methods to arrive at the enterprise value of the business, which is the total value of the company's assets.
- Adjusting the enterprise value by adding cash and cash equivalents and subtracting long-term debt, to arrive at the equity value of the target company.
- Adjusting the valuation results by applying discounts and other adjustments, such as the discount for lack of marketability in the case of a private company.
- Dividing the adjusted equity value by the number of shares outstanding of the target company to arrive at the value per share.
- Reconciling the range of per-share valuations under all selected approaches and methods (using weights) to arrive at the weighted average value per share.

The calculated equity value of the target arrived at through a business valuation can be significantly different from the equity book value (assets minus liabilities) that shows on the balance sheet of the target. According to financial reporting standards, as represented by the US Generally Accepted Accounting Principles or by the International Financial Reporting Standards, the assets and liabilities presented on the balance sheet do not always show at their 'fair value' (an accounting term that, for the purposes of this article, is analogous to the concept of 'fair market value'). Some assets (cash and short-term investments) are presented at fair value, while others may be presented at depreciated historical cost

(buildings). That being said, some assets are not presented at all on the balance sheet, which are the assets we are dealing with in this article: internally generated intangible assets. The accounting definition of 'intangibles' is broad (similar, but not identical, to the legal definition of 'intellectual property'), including asset buckets such as technology intangibles (patents, trade secrets and software), marketing intangibles (trademarks, service marks and internet domains), customer intangibles (customer lists and order backlog), contract intangibles (licence agreements and broadcast rights) and artistic intangibles (copyrights and musical compositions). Other than some limited cost capitalisation (certain R&D cost and patenting cost), internally generated intangibles are not presented as assets on the books of the companies that created them. The accounting logic behind this goes to the speculative nature of these assets and the conservative nature of asset recognition in financial reporting; therefore, the cost of creating them is usually expensed on the income statement during the year it is incurred, without recognising these costs as assets.

The business valuation process and the intangible reporting gap have several critical implications when it comes to the impact of intangibles on M&A pricing:

- The full identification of the intangible assets that are being acquired with the target company requires a deliberate effort, as the assets are not present on the balance sheet. The mere existence of these assets needs to be determined, not only for the buyer but also, sometimes, for sellers who do not have a full grasp of the scope of their intangible assets because the assets are not tracked and reported on a regular basis.
- There is usually no separate valuation of intangible assets (or any assets for that matter) pre-M&A because the valuation is done on a stock basis. To value the intangibles included with the target, a separate valuation needs to be done to support the traditional business valuation.
- Whether a market approach (multiple on revenues or other metrics) or an income approach (DCF analysis) is applied in the pre-M&A business valuation phase, that valuation is based on revenues or cash flows that relate to the core business of the company. Any additional revenue sources embedded in the IP assets (such as patent out-licensing) are not usually included if such activities are not employed by the seller in the regular course of business as of the acquisition date. This is another reason for a separate valuation of intangible assets to supplement the traditional business valuation.

All of the above goes to support the notion that there is an intangible valuation gap in the process of M&A deal pricing. This is usually something that the seller would care about more than the buyer, since including intangibles in M&A pricing can help support a higher valuation asking price in several ways (see below). That being said, this intangible reporting gap will catch up with the buyer eventually due to the post-M&A reporting requirements, where the buyer needs to recognise all assets, including intangible assets, at their fair value on the balance sheet. That includes valuing all identifiable intangible assets at their fair value and reporting them (for the first time). Intangibles finally get reported because they were paid for, which is the only situation when the accounting rules allow intangibles to be reported on the books.

We turn next to describing the valuation of intangibles from the seller's and buyer's points of view, using case studies that demonstrate how intangibles can help bridge the valuation gap.

LEVERAGING IP TO CLOSE THE M&A VALUATION GAP

On the seller side, there is usually a need to justify an asking price that is higher than the buyer is willing to pay. On the buyer side, there is usually a need to de-risk the deal by splitting with the seller the synergy that the buyer sees in the deal and not overpaying for the target (synergy is usually a necessary condition for there being a deal in the first place). Our previous discussion as to how companies are being valued in an M&A deal, and the fact that intangibles are often missing from the valuation and from the balance sheet of the seller, can point to several ways that both sellers and buyers can meet their valuation objectives.

INCREASING THE VALUATION MULTIPLE

As discussed previously, M&A deals are priced using business valuation methods. Some of the most common business valuation methods are the market-based comparable multiples applied to accounting metrics, such as the multiple on revenues and the multiple on earnings before depreciation and amortisation, etc. Since the accounting metrics are generally based on historical financial statements, the variation is really in the multiple that is being applied to these metrics. IP can impact valuation multiples by introducing an element of technology to traditional industries or by introducing brand elements that can allow for a higher market share or for premium prices. This is an elegant way to increase valuations in a way that is consistent with how pre-M&A valuations are already done, and can help bridge the gap on both sides: it helps a seller stand out from the crowd of competitors and substantiate a higher asking price than would normally be allocated for a competitor without these unique intangible assets, and it can also increase the synergy that the buyer can realise from the deal in cases when the buyer has the resources to leverage these unique assets better than the seller can, applying them in other lines of products or in other markets.

Below are two examples highlighting how strong brands, technological innovation and buyer synergy can justify higher valuation multiples in acquisitions:

- Unilever's acquisition of Dollar Shave Club (2016): Unilever, a traditional consumer goods company, acquired Dollar Shave Club, a digital-first, direct-to-consumer start-up that disrupted the traditional razor market. Unilever paid around US\$1 billion for Dollar Shave Club, based on a multiple estimated at around five to six times its annual revenue, which was considerably higher than the average multiple for consumer goods companies at the time. This high valuation multiple reflected not only the strength of Dollar Shave Club's brand among a younger, tech-savvy demographic but also its technological capabilities in e-commerce and subscription services.^[4]
- Salesforce's acquisition of MuleSoft (2018): Salesforce, a leader in cloud-based customer relationship management solutions, acquired MuleSoft, a platform for building application networks, for US\$6.5 billion. The deal valued MuleSoft at approximately 21 times its revenue – a substantial premium reflecting the strategic value of its technology. MuleSoft's specific technology in application programming interface management was a key driver for the acquisition. MuleSoft commanded a higher multiple due to its proprietary technology and its strategic importance

to Salesforce's expansion into more integrated, connected cloud services. The acquisition was seen as enhancing Salesforce's technology stack significantly.^[5]

ADDING INTANGIBLES TO THE VALUATION

To overcome the absence of intangible assets from M&A deal pricing, one way that the seller can argue a higher asking price in a way that demonstrates to the buyer additional synergy is to highlight the non-core revenue potential embedded in IP, which is outside the financial projections used in the business valuation. This particular strategy is most appropriate for patents, where the assets have broad claims with coverage outside the core products of the seller company, or where the seller patented certain R&D projects for future, strategic purposes, with coverage of future products that do not currently exist. This creates a licensing potential that may not be utilised by the seller but that is now transferred to the buyer, who, with better resources, can engage in licensing or even in manufacturing these products that are non-core for the seller. To highlight the non-core potential of IP assets, a special valuation needs to be conducted, since the assets have no basis on the balance sheet and are otherwise not included in the revenue projections.

This is a scenario encountered frequently in the author's practice, and one recent example is an IP valuation we conducted to support M&A negotiations by a privately held company (seller) that operated in the field of telecoms antenna technology. The seller held a portfolio of patents, which were not reported on the balance sheet (as previously discussed). The valuation was conducted to inform and validate the asking price requested by the seller and demonstrate to the buyer the upside potential yet to be unlocked by the IP being acquired. More specifically, the seller was approached by others interested in its antenna technology for uses that exceeded the seller's offerings. The seller was not interested in licensing, but as the company was getting sold to a specific buyer who the seller knew could leverage these assets, it became clear that the assets were not valued as part of the M&A pricing. As a result of the seller presenting an economic analysis of the potential value of the non-core assets, they were able to realise a significant increase in the deal price. While this particular deal had a positive outcome for the seller, sometimes, buyers and sellers cannot agree on the value of non-core IP assets; in those situations, certain IP assets can be carved out of the acquisition and remain with the seller.

SETTING IP-BASED PAYMENT MILESTONES

In M&A transactions, particularly those involving certain companies or sectors where IP plays a critical role, payment milestones are often tied directly to the development of the target's IP portfolio. These situations happen in certain R&D-intensive industries such as biotechnology and pharmaceuticals, where the companies are sometimes acquired at the R&D phase, pre-regulatory approval and pre-commercialisation, and where the IP created by the seller is usually the only indication of value. In these types of situations, the payment terms can be tied to milestones relating to the acquired IP platform. These payment milestones are designed to mitigate risk for both parties: from the seller's perspective, payment milestones help realise a higher price by spreading the payment over time (as opposed to getting a lower price if it is all paid up front); for the buyer, milestones help spread the risk by tying payments to critical inflection points relating to the IP development risk undertaken by the buyer.

One example of using patent issuance as a milestone is a deal in which a significant portion of the payment in a biotechnology diagnostics start-up acquisition by a biopharmaceutical conglomerate was contingent upon the successful granting of patents relating to the

acquired technology, with the final scope of the claims covering certain target diseases. While this milestone seems relatively straightforward, it should be applied with caution. In this particular deal, the parties got into a post-M&A legal dispute over the specific language of the claims associated with the subsequently issued patent, which affected whether the milestone was actually met. That being said, there have been examples of a similar arrangement applied in biotechnology deals, and it is a milestone that could work if drafted carefully.

INCORPORATING IP LICENSING AS PART OF THE PAYMENT

Another variation of the IP-based milestones is leveraging access to additional IP assets owned by the seller as part of the acquisition price. That type of arrangement is seen in situations when the seller is holding on to some of the intangible assets (such as certain patents) that are excluded from the acquisition. This type of arrangement is becoming more common as buyers are not interested in paying for certain assets (as previously discussed) and yet are interested in securing access to the assets through a licence. The seller can then leverage that to gain licensing revenues on the assets that it retains, in addition to the payment for the assets that it sells.

One prominent example of this arrangement is Microsoft's acquisition of Nokia's Devices & Services business (2013).^[6] The deal went beyond just acquiring Nokia's devices and services; it also included a comprehensive agreement to license Nokia's extensive portfolio of patents and mapping services. The all-cash deal included two components: (1) a €3.79 billion payment for Nokia's Devices & Services business and (2) an additional €1.65 billion licence payment for Nokia's patents – for a total transaction price of €5.44 billion. By structuring the deal this way, Microsoft effectively minimised its risk while maximising the strategic benefits of Nokia's IP, allowing both companies to benefit from the ongoing licensing revenues and the expanded market presence enabled by this arrangement.

CONCLUSION

The analysis of the role of intangible assets in M&A deal pricing highlights several critical lessons and strategic recommendations for both buyers and sellers. One key lesson is the significant impact that intangible assets can have on closing the valuation gap in M&A transactions. The traditional business valuation methods often overlook or undervalue these intangible assets, leading to discrepancies between the perceived value by sellers and buyers. This gap can create challenges in reaching an agreeable deal price.

For sellers, the lesson is clear: fully identify and articulate the value of your intangible assets. Since these assets may not appear on the balance sheet, it is important to conduct a separate valuation that demonstrates their potential revenue generation outside core business activities. Highlighting the strategic value and non-core revenue potential of IP assets can justify a higher asking price and attract buyers looking for additional synergies. Incorporating IP in the business to increase the valuation multiple is another useful strategy. For buyers, the recommendation is to perform thorough due diligence on the target's intangible assets, considering not only their current use but also their potential for generating synergy and future value. Buyers should be prepared to recognise these assets at fair value post-acquisition, as is required by accounting standards, to avoid any surprises in the reporting phase.

Finally, structuring deals with IP-based milestones can be beneficial for both parties. Sellers can achieve a higher price by spreading payments over time, while buyers can mitigate risks

by tying payments to specific achievements relating to IP development. Another innovative approach is using patent licensing in creative ways to supplement the acquisition price for assets that the buyer does not necessarily wish to acquire.

Overall, integrating a robust understanding and a strategic approach to intangible assets into the M&A process can bridge valuation gaps, enhance deal success and unlock additional value for both buyers and sellers.

ENDNOTES

- [1] Efrat Kasznik is president at Foresight Valuation Group LLC.
- [2] https://techcrunch.com/2011/08/15/breaking-google-buys-motorola-for-12-5-billion/?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xILmNvbS8&guce_referrer_sig=AQAAAMIZcUHlmt4MLrtcuFtzexWnHLRkavuKuzirb xjJNIT1nU4yL7w9S9BtVY5cL3L9T_J0dM Rg36im JFKtnHvhLeoM6VpEUenSJlzSp5xD9NsTocaWqsr8RP8iAU ox-1-SUnvNSGwlnkzDm7 ifZSYkgSx2LuPwJz3rzjZfjQRXi2W.
- [3] <https://www.bain.com/insights/looking-back-m-and-a-report-2024/>.
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